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The Nordic countries on Nord Stream 2: between scepticism and neutrality

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Sweden, Finland and Denmark have seen a revival of the debate on the Nord Stream 2 project in recent months. As the planned gas pipeline will run through these countries' exclusive economic zones and/or territorial waters, the governments in Stockholm, Helsinki and Copenhagen will have to take a decision on NS2 construction soon. They find themselves in a difficult situation. On one hand, the Russian-Ukrainian war and the deteriorating security situation in the Baltic Sea region have resulted in more distance towards Russian economic projects in these countries. All of them have also come under increasing pressure from the United States, the CEE countries, and domestic opposition parties, which have been demanding the project's suspension. On the other hand, neither Stockholm, Helsinki nor Copenhagen wants to use their national laws or the Law of the Sea to block Nord Stream 2, which enjoys support from Germany.

Sweden, Finland and Denmark are therefore unlikely to block or slow down the procedures of issuing national approvals for the pipeline's construction. However, they expect the European Commission to assess the compliance of Nord Stream 2 with the EU's Third Energy Package. In addition, Stockholm and Copenhagen in particular want the EU to take a common political stance on the project, based on the assessment of Nord Stream 2's conformity with the objectives of EU energy and climate policy as well as the EU's security interests.

Nord Stream 2's route through the Nordic countries: the legal aspects

According to the plans, Nord Stream 2 (NS2) would run in parallel to two existing lines of the Nord Stream 1 pipeline (NS1) via the exclusive economic zones (EEZ) of Finland (375 km) and Sweden (500 km), and the EEZ and territorial waters of Denmark (a total of 140 km; see Map). In the case of the first two lines of NS1, the Nord Stream company has successfully applied for building permits in all three countries. This was granted in 2009, and at that time all the procedures took around three years to complete¹.

In the case of NS2, the Nord Stream 2 company submitted its first application in Sweden for a permit to lay the underwater pipeline in the Swedish EEZ on 16 September 2016, and announced that it would submit the corresponding applications in Finland and Denmark at the beginning of 2017.

On the basis of the Convention on the Law of the Sea, **Denmark** can refuse consent for the NS2 gas pipeline to be constructed in its territorial waters to the southeast of the island of Bornholm, where it has the complete freedom to authorise the laying of pipelines. It would become necessary to move the NS2's route to the EEZs of Denmark or Sweden which would complicate the implementation of the project. To the north of Bornholm, a heavily-used ship-

¹ The bodies responsible for the issue of the relevant permits are: in Finland, the Ministry of Economic Affairs and Employment; in Sweden, the Ministry of Enterprise and Innovation; and in Denmark, the state Energy Agency.

ping route runs through the Danish and Swedish EEZs, which would impede the laying of the gas pipeline. To the south of Bornholm, the Polish and Danish EEZs are not delimited; constructing the gas pipeline in this area would thus be associated with legal controversies, which would extend the entire process.

Finland and Sweden, on the basis of the Law of the Sea, are practically not able to block the construction of the NS2 pipeline in their exclusive economic zones.

Finland and Sweden, on the basis of the Law of the Sea, have practically no freedom to block the construction of the NS2 pipeline in their exclusive economic zones, where the freedom to lay pipelines exists. However, laying out the routes of such pipelines in the EEZs requires the consent of the coastal state. It is granted on the basis of an assessment of the project's impact on the environment; and so both countries could prolong this process².

The sceptical Swedes: consent from the government, veto from the EU?

The debate on the NS2 project in Sweden accelerated at the end of August 2016 due to the visit of the US Vice-President Joe Biden, who urged the Swedish government to adopt a negative stance

towards the project³. Before the visit, representatives of the left-wing government of PM Stefan Löfven (who heads a coalition of Social Democrats and Greens) were reluctant and cautious in speaking out on this issue. The debate was shaped by the conservative opposition – the Moderates, the Centre Party, Christian Democrats and Liberals⁴ – who took advantage of the subject to criticise the government and call for the Swedish Foreign Ministry to take strong action to block the project. Joe Biden's visit led to the Swedish government adopting a more sceptical and decisive position. This changed attitude was clearly visible in the statements by Foreign Minister Margot Wallström during discussions in the Swedish parliament on 6 September this year⁵. The Swedish government's overall sceptical position towards the project is also reinforced by the fact that demand for natural gas in Sweden is very low (around 4% of domestic consumption); 20% of this demand is covered by domestic production, with the remaining 80% being covered by imports from Denmark. Sweden has no business ties with Gazprom.

The Swedish debate on NS2 gives reason to conclude that the government will permit the gas pipeline route to run through the Swedish EEZ and will not use environmental procedures to delay the construction. Ensuring that relations between states are based on international law is in the vital interest of Sweden, which is a relatively small country with considerable regional and global ties, and moreover remains outside military alliances. Sweden's reasoning is that, since Stockholm urges Russia to comply

² In order to apply for consent from the above-mentioned states, the company is obliged to honour the Convention on the Law of the Sea, dating from 1982. In accordance with the Convention, in an EEZ all states enjoy the freedoms of navigation and overflight, the laying of submarine cables and pipelines, and other internationally lawful uses of the sea related to these freedoms, such as those associated with the operation of ships, aircraft and submarine cables and pipelines. The procedures for environmental impact assessment are governed by the 1991 Espoo Convention (Convention on environmental impact assessment in a trans-boundary context). The parties to the Convention are all Baltic Sea states with the exception of Russia (which has not ratified it), although it did apply its regulations during the construction of the NS1 gas pipeline.

³ Katri Svarfvar, 'Biden: Nordstream en "dålig affär"', *SVT Nyheter*, 25 August 2016, <http://www.svt.se/nyheter/inrikes/biden-nordstream-en-dalig-affar>

⁴ The construction of the NS2 was criticised most harshly in Swedish discussions by representatives of the Christian Democrats (who currently have 3.2% support in the polls) and the Liberals (currently 5% support).

⁵ The discussion was preceded by Foreign Minister's answer to the parliamentary question on Nord Stream 2. See Riksdagens snabbprotokoll 2015/16:130, Svar på interpellation 2015/16:753 om Nordstream 2, 8 September 2016, https://www.riksdagen.se/sv/dokument-lagar/dokument/interpellationsdebatt/nordstream-2_H310753

with international law, Sweden itself should do the same. However, the Swedish government is sceptical about the construction of the NS2 gas pipeline, which it perceives as a geopolitical project, intended to increase the EU's dependence on gas from Russia, and thus on political pressure from the Kremlin. Sweden is also afraid that Russia could use the pipeline as an excuse to intensify its military operations in the Baltic Sea to protect the gas infrastructure.

Sweden is most sceptical about the construction of the NS2 gas pipeline, and favours stopping the project at the EU level.

As it sees no legal possibility of blocking the pipeline's construction on the national level, Sweden favours stopping the project in the EU. Stockholm expects the European Commission to assess NS2's compliance with the Third Energy Package. It also wants a political discussion and decision on NS2 to be taken at the level of the Council of the EU or the European Council, based on the assessment of the project's conformity with the objectives of EU energy and climate policy, as well as the EU's security interests. Swedish Foreign Minister has thus declared Swedish readiness to cooperate with the Baltic Sea states in order to counteract the project on a political level within the EU. However, Sweden will not actively engage in blocking NS2, if it considers the likelihood of success to be too small.

Sweden's current position and the national discussion on the NS2 gas pipeline resemble the situation in 2009. At that time too, the construction of the NS1 pipeline was the subject of political controversy: the conservative government was unenthusiastic about the project, and the left-wing opposition openly advocated against it, citing environmental and security arguments. However, the government did not want to prolong or block the administrative procedures relating to the construction of NS1 in the

Swedish EEZ. It also did not want to participate at the political level in the coalition seeking to block the NS1 project in the EU, which was supported then by the biggest EU member states. Sweden was also holding the EU presidency in the second half of 2009, during which the building permits were to be issued, and wanted to be on good terms, and find compromises in the area of climate policy, with Russia. Swedish government granted thus the permit for the NS1's construction in the Swedish EEZ in November 2009, after it requested the Nord Stream company to supplement the environmental documentation in February 2008. Due to Sweden's scepticism regarding the plans to construct a service platform for the construction of the pipeline near Gotland, the Nord Stream company itself withdrew from this idea.

If the project is implemented, Sweden (like Finland) will benefit economically from the construction of NS2. At the same time, however, the possible use of Swedish ports by Nord Stream 2 company is a concern for Stockholm. The Nord Stream company plans to use the ports of Karlshamn (in the south of Sweden) and Slite (on Gotland) to store the pipes, although no contracts have been signed yet. Local authorities are positively geared towards building NS2 due to the investments in the port infrastructures, the additional income and employment. At the national level, however, Swedish politicians, military and experts are warning that Russia could use both ports for sabotage activities against Sweden due to their strategic locations; the port of Slite is located on Gotland, which is a strategic location for security of the whole Baltic Sea region, and Karlshamn is near the Swedish navy's main base in Karlskrona.

The neutral Finns: unwillingness to politicise the project

In Finland, a wider discussion on the NS2 project may be expected after the Nord Stream 2 company submits its application for a construc-

tion permit (probably by February 2017). As yet, the NS2 project has not sparked a political debate in Finland. Representatives of the centre-right government of PM Juha Sipilä (made up of the Centre Party, the Finns Party and the National Coalition Party) have hardly said a word on the subject, until the government was forced to take an official position in response to a parliamentary question in September 2016.

Finland treats the planned NS2 pipeline as a business initiative, and has adopted a neutral stance towards the project.

The public discussion about NS2 was also revived by the echoes of Joe Biden's visit to Sweden, as well as a report on Russia published by the Finnish think-tank FIIA (30 August; the report was commissioned by the government)⁶. The FIIA report refers to the NS2 gas pipeline as a geo-economic project, which will marginalise the importance of Ukraine as a gas transit country; create a gas dependency with Germany that will increase Russia's ability to exert political and economic pressure on Berlin; and undermine the EU's energy policy. It recommends that Finnish decision-makers engage in efforts to develop a joint EU position on the political level, while at the same time discouraging them from raising environmental issues in the Finnish EEZ in order to block the project. However, the report is unlikely to affect the government's neutral position on the NS2.

The Finnish government will not use the environmental impact assessment procedure in order to delay implementation of the project, and will allow the gas pipeline to be laid in the Finnish exclusive economic zone. Helsinki is treating the planned gas pipeline as a business initiative, as it

did in the case of NS1, and has adopted a neutral stance towards the project, not seeing any interest in either promoting or blocking it⁷. At the same time, Finland is waiting for the European Commission's assessment on whether NS2 complies with the Third Energy Package. In contrast to Stockholm, Helsinki is against using political arguments to block the planned gas pipeline in the EU. Finland does not want to politicise the project for two reasons. Like Sweden, it attaches great importance to compliance with international law. Furthermore, it does not want to politicise environmental issues in relations with Russia since protection of the Baltic Sea basin is an important objective of Finland's regional policy, with Russia being largely responsible for the pollution of the waters of the Gulf of Finland. At the same time, Finland is committed to economic cooperation with Russia, and is seeking to develop it in those areas not covered by sanctions⁸. Finland has maintained an attitude of benevolent neutrality towards the NS1 project. The original plans to build an undersea gas pipeline linking Russia and Germany were to have been carried out by the Russian-Finnish company North Transgas (later the Nord Stream company), which was created in 1997. However, in 2005, as part of a restructuring plan, the Finnish energy group Fortum sold its 50% stake in the company to Gazprom. Finland thus treated the NS1 project as a business initiative, and granted its construction permit in November 2009, while making it conditional on several environmental factors (prohibiting the ships laying the pipeline from anchoring; imposing a special tax to cover fishing losses). Finland does not see any risks in energy cooperation with Russia.

⁶ Toivo Martikainen, Katri Pynnöniemi, Sinikukka Saari, Venäjän muuttuva rooli Suomen lähialueilla, FIIA, 30 August 2016, http://www.fia.fi/en/publication/607/venajan_muuttuva_rooli-suomen_lahialueilla/

⁷ The Finnish government's response to a parliamentary question on Nord Stream 2. See Vastaus kirjalliseen kysymykseen Nord Stream 2 – hankkeen turvalli-suuspoliittisen ulottuvuuden huomioimisesta, 28 September 2016, https://www.eduskunta.fi/FI/vaski/Kysymys/Documents/KKV_426+2016.pdf#search=Nord%20Stream%202

⁸ Examples of energy cooperation include the Finnish energy group Fortum's investments in Russia, and the choice of ROSATOM as the contractor for a new nuclear reactor at the Pyhäjoki nuclear power plant (2015).

It imports 100% of its gas from Russia and considers Gazprom a reliable partner, because – in contrast to the CEE countries – it has not experienced any politically motivated interruptions in the supply of Russian gas. Until recently, Gazprom also held a 25% stake in Gasum, the operator of the Finnish gas transmission network, until the Third Energy Package came into force, when the Finnish government bought its shares. In addition, natural gas is of little importance in domestic energy consumption, amounting to no more than around 7% in 2015. Finland does not have a well-developed transmission network (it is only found in the south of the country), and recognises the problem of being dependent on a single gas connection with Russia (Imatra-Tampere), and so it is investing in the construction of small LNG terminals and a pipeline connection with Estonia⁹.

On the basis of the Convention on the Law of the Sea, Denmark can refuse consent for the NS2 gas pipeline to be constructed in its territorial waters.

In Finland some quite powerful interest groups are lobbying for the NS2 project, expecting benefits for the Finnish economy associated with establishing logistics centres for the pipeline's construction in the Finnish ports of Kotka and Hanko. At the same time, in contrast to Sweden, the Finnish government perceives no threats to the country's security in the use of its EEZ and ports for the pipeline's construction. The creation of NS2 is supported by the biggest Finnish trade union (the Metalworkers' Union), which has considerable political influence. The pipes would be coated and stored in the port of Kotka,

and also stored in the port of Hanko. The necessary infrastructure is already in place, since both ports were involved in the construction of NS1. The trade union hopes that the construction of NS2 would create jobs for about 300 people in both cities (unemployment in Kotka, a town of around 55,000 inhabitants, exceeds 20% and is among the highest in the country).

The 'wait-and-see' Danes: between Germany and the US

The real debate on the project in Denmark will begin only when the Nord Stream 2 company applies for a permit to construct the gas pipeline in the Danish EEZ and territorial waters at the beginning of 2017. So far, discussions on the matter have been sporadic and superficial, and the statements by representatives of the minority government of PM Lars Løkke Rasmussen (who heads the liberal *Venstre* party) have been very restrained. The debate was briefly revived in July thanks to an appeal by the Polish, Lithuanian and Estonian foreign ministers to the Danish government to block the pipeline's construction. The construction of the NS2 is backed by the nationalist Danish People's Party, which supports the *Venstre* party's government; meanwhile some opposition leftist politicians, mainly from the Social Liberals (a small party) and the Social Democrats (the largest party in Parliament), oppose the construction of NS2¹⁰. In Denmark there are no strong interest groups lobbying for the construction of NS2, although if the project does get underway, it could potentially be of benefit to the Danish consulting and law firms which advised the Nord Stream company on NS1 project.

Denmark will not block or delay the project on the basis of national law or the Law of the Sea.

⁹ In September 2016, the first small-scale LNG terminal was opened in Pori. In the coming years there are plans to open more LNG terminals (in Tornio, Hamina and Rauma). In addition, by 2020 there should be a pipeline connection with Estonia (Balticconnector), which will link Finland to the European network of gas pipelines via the Baltic States.

¹⁰ The former foreign minister (2014-2015), Martin Lidegaard (of the social-liberal party), who is the biggest critic of the project, appealed to the government to develop a joint negative stance towards the construction of the pipeline together with Sweden and Finland (and also in the EU).

Copenhagen may be expected to agree to the delineation of the NS2's route in their EEZ and territorial waters. Currently, however, the Danish government has adopted a wait-and-see attitude, announcing that it will not undertake any analyses, and will not adopt a position before the Nord Stream company's application for a building permit has been submitted.

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The Danish government has adopted this attitude for several reasons. Denmark wants to avoid a situation in which it would have to unambiguously back either the supporters of the pipeline project (mainly Germany, its most important economic partner) or its opponents (primarily the US, its key ally in security policy, as well as the CEE countries). The Danes are aware of the geopolitical dimension of the NS2 project. However, they attach great importance to compliance with the Law of the Sea, and the Danish interpretation of it obliges the state to agree to the construction of the pipelines in its territorial waters. In addition, the Convention on the Law of the Sea plays a key role in Danish policy in the Arctic, as it provides the basis for resolving the issue of overlapping Danish and Russian claims to the continental shelf. Denmark is therefore counting on the EU to take the responsibility for the fate of the project. Copenhagen's hope is that the European Commission will adopt a formal position on the project's compatibility with the Third Energy Package, and that the political discussions on the project will be held in the European Council¹¹.

¹¹ Statement by the Danish Minister of Foreign Affairs, Kristian Jensen, in the Danish Parliament. See Folketinget, Udenrigsministerens sikkerhedspolitiske redegørelse 2015, December 2015, <http://www.ft.dk/samling/20151/redegoerelse/r8/beh1/forhandling.htm?startItem=230>

Denmark's room for manoeuvre on the issue of the NS2 construction is also limited by its previous consent to have the NS1 pipeline laid in the Danish EEZ and territorial waters. This was granted in October 2009 by the government of Lars Løkke Rasmussen (the current Prime Minister), which treated the NS1 as a business initiative. In addition, the Danish gas business sees the purchase of Russian gas as an investment in the diversification of supply sources. The process of granting environmental consent to NS1 came at the moment when extraction of natural gas in Denmark had started to drop off, in connection with the exhaustion of Danish fields in the North Sea¹². The largest Danish state energy company DONG then started to import small amounts of gas from abroad in order to increase the security of supply to the internal market and to Sweden. Part of this strategy involved investment in Norwegian gas fields, as well as agreements with Gazprom (2006 and 2009) for gas deliveries via the NS1 pipeline and the network in Germany¹³. Today, despite gas imports from Norway and Russia, Denmark is still an energy-independent state and a net exporter of both oil and natural gas. There is no danger of Denmark increasing its dependence on Russian gas in the future. For several years now, Copenhagen has consistently pursued a policy of total transition to renewable energy by 2050, and is gradually moving away from fossil fuels in its national energy consumption¹⁴.

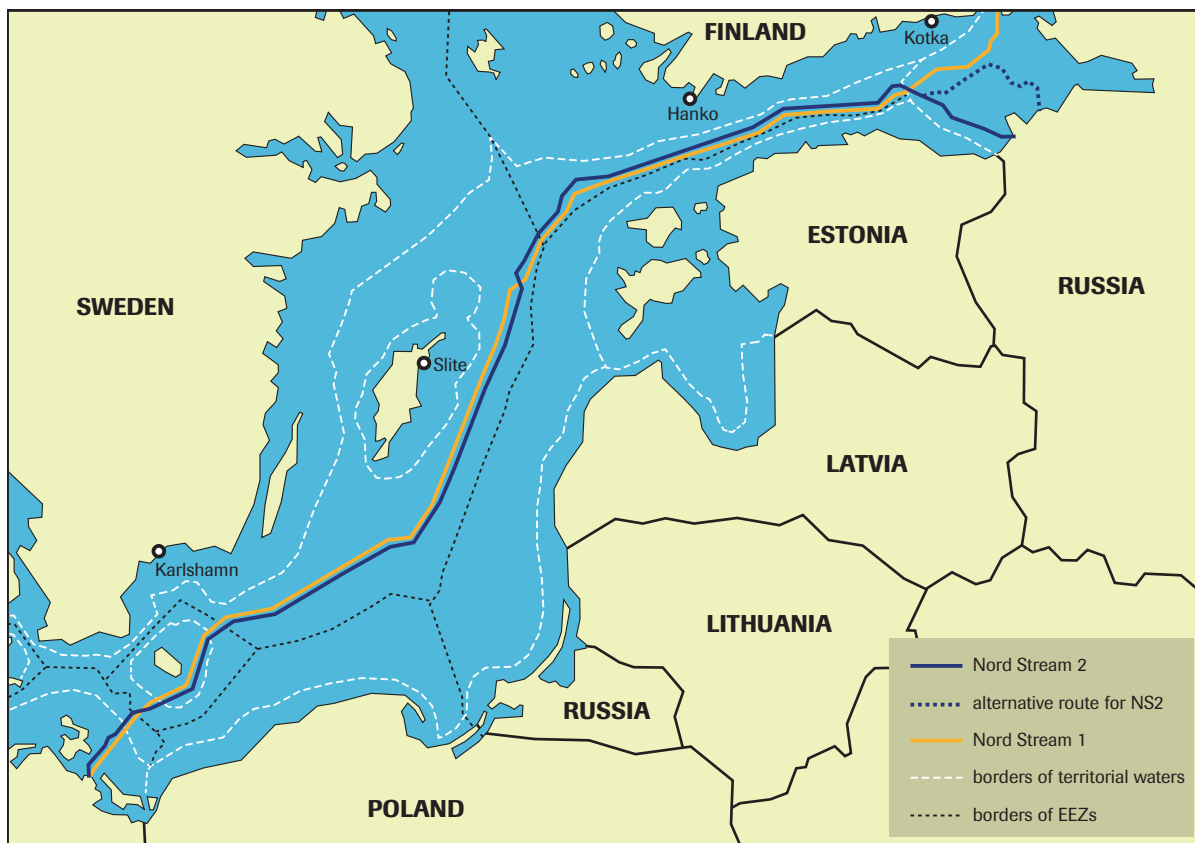
¹² Their operation is estimated to end in 2045-2050.

¹³ In 2015, DONG bought 672 million m³ of Russian gas (representing around 0.5% of Gazprom's exports to Europe). See 'Gazprom export, Denmark', <http://www.gazpromexport.ru/en/partners/denmark/>

¹⁴ Denmark will probably remain a net exporter of natural gas until 2025. In 2014, the share of natural gas in the Danish national energy consumption amounted to 16.6% (a figure which is falling). Energinet, 'Gas consumption and supplies, 2015-2050', <http://www.energinet.dk/EN/GAS/Udfordringer-for-gassen-i-fremtiden-ny/Gasforbrug-og--leverancer-2015-2050/Sider/default.aspx>; The European Statistical Office, <http://ec.europa.eu/eurostat/web/energy/data/database>

MAP

The planned route of the Nord Stream 2 pipeline



Source: Gazprom Export, Nord Stream and the Nord Stream pipeline scheme, map 2; <http://www.gazpromexport.ru/en/projects/>

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